

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS (Boston)

3 No. 1:25-cv-10685-WGY

4  
5 AMERICAN ASSOCIATION of UNIVERSITY PROFESSORS, et al,  
Plaintiffs

6 vs.  
7  
8

9 MARCO RUBIO, in his official capacity as  
Secretary of State, et al,  
10 Defendants

11 \* \* \* \* \*

12  
13 For Hearing Before:  
14 Judge William G. Young

15 Status Conference  
16

17 United States District Court  
District of Massachusetts (Boston.)  
18 One Courthouse Way  
Boston, Massachusetts 02210  
19 Thursday, May 22, 2025

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22 REPORTER: RICHARD H. ROMANOW, RPR  
23 Official Court Reporter  
United States District Court  
24 One Courthouse Way, Room 5510, Boston, MA 02210  
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## 1 P R O C E E D I N G S

2 (Begins, 2:45 p.m.)

3 THE CLERK: The Court will now hear Civil Action  
4 Number 25-10685, the American Association of University  
5 Professors, et al versus Marco Rubio, et al.

6 THE COURT: Well good afternoon counsel. I have  
7 allowed internet access to this hearing, and so it's  
8 appropriate that I say, if you are attending this  
9 hearing via the internet, the rules of court remain in  
10 full force and effect, that means there is no taping,  
11 streaming, rebroadcast, screen shots, or other  
12 transcription of these proceeding.

13 I'm going to go first, because I think we're off  
14 on an unfortunate wrong course procedurally. I'm not  
15 talking about substance, I'm talking about procedure.

16 Now this was billed as a status conference. My  
17 understanding of status conferences is just a time to  
18 touch base, see generally how things are going, and not  
19 entertain matters of substance. I confess I was  
20 surprised, on the day preceding the conference, to  
21 receive the defense's motion for a protective order,  
22 which I had not known was coming, and, um, I will say,  
23 Mr. Kanter, if it was thought that I was going to  
24 entertain this motion today, that is most assuredly not  
25 a status conference and I would not have allowed you to

1 appear remotely. But then I reflected on it and it's  
2 clear, looking at the papers, there was no such  
3 intention that I would, um, entertain this. But we'll  
4 understand that it's not my practice just to hold status  
5 conferences and I think it's necessary that I enter some  
6 further and more precise orders as to how we're going to  
7 -- how we're going to proceed.

8 Now the plaintiffs promptly, um, files two  
9 letters. First of all, letter practice is inappropriate  
10 in this court, only motions and oppositions to motions  
11 are the way to communicate with the Court. No other  
12 way. I do not -- I don't want to be pompous, I was  
13 going to say I do not receive letters, but obviously I  
14 received these, I read them, and I'll docket them, their  
15 briefs, but no more. You file a proper opposition, if  
16 you have a wanting opposition, and then you, um, brief  
17 it.

18 Also, one of the two letters just bleats about  
19 defaults in discovery. I'm not going anywhere. The  
20 Rules of Civil Procedure allow you to file motions. I  
21 am very sensitive to the need for expedition in this  
22 case. By collapsing the preliminary injunction with  
23 trial on the merits, I did not for a moment suggest, and  
24 no party should think I did, suggest that we would  
25 somehow just put this on the list somewhere and then it

1       would pop up someday down the line.

2                 Plaintiffs filed a motion for a preliminary  
3 injunction, they sought emergency relief from the Court.  
4 Yes, I collapsed it with trial on the merits because I  
5 want -- I want evidence, I want to know exactly what  
6 happened to make a prudential ruling. It was the second  
7 letter, which I'm treating as an opposition, that in  
8 effect briefed the matter.

9                 So going forward, here's how we're going to  
10 proceed. If any party needs to communicate by the  
11 Court, they'll do it by motion. All motions in this  
12 case are considered emergency motions, from the very  
13 fact that the case is going to go to trial, to the  
14 extent a trial is appropriate, um, no later than July.  
15 Opposition to motions will be filed 3 business days  
16 thereafter.

17                 It's perfectly appropriate to ask for an oral  
18 hearing on a motion. Candidly I don't normally give  
19 oral hearings on motions. So, um -- but I decide them  
20 promptly. And you understand, until August, I hope to  
21 take some time in August, but I'll be here, and I try to  
22 stay on top of my docket.

23                 Now let's turn -- because I have this pile of  
24 papers in front of me, and I don't suggest, though it  
25 can be argued, I don't suggest that the defendants'

1 motion is interposed for the purpose of delay, but it's  
2 not inappropriate for me to say that, given the very  
3 thorough, um, case-management conference I have held in  
4 this case, that it comes as a surprise that these  
5 matters are being raised so late in the case. This sort  
6 of argument for a protective order is something that the  
7 defendants' public officials should have understood from  
8 the very get-go.

9 Nevertheless, I'm going to give it an oral  
10 argument. Not this afternoon. I would be subjected to  
11 being blindsided if I did that, and I won't do that.  
12 But I'm going to make the following observations.

13 The defendants' motion is not ripe. The time --  
14 well either it's been waived, because it comes so late  
15 and one would have expected that the defense would have  
16 raised these things when we were talking about case  
17 management, but I'm not going to deny it on those  
18 grounds, I'm going to entertain it on the merits. But  
19 all parties should understand that, for one thing, this  
20 is not only a case under the Administrative Procedure  
21 Act, but to the extent that it is a case under the  
22 Administrative Procedure Act, it is the obligations of  
23 the defendant public officials to produce the  
24 administrative record. It will be produced no later  
25 than noon, Thursday, May 29th, that's a week from today.

1       The full administrative record on which the defendant  
2       public officials rest, for the defense of this matter,  
3       to the extent there is an administrative record, will be  
4       produced, and the Court will look at it.

5           On Monday, the 2nd of June, at 11:00 -- I assumed  
6       you would like 11:00 because some of you are out of town  
7       and that will give you a chance to be here, we'll hold  
8       oral argument on the defendants' motion for a protective  
9       order, et cetera. That takes us -- that's how we're  
10      going to address that motion. And I express no opinion  
11      on the merits of the motion. Well I have, because I  
12      think, and I am confident in saying so, that this case  
13      goes well beyond any claim under the Administrative  
14      Procedure Act.

15           Fortunately I have the, um, interrogatories and  
16      requests for, um, production and I've reviewed them. I  
17      don't give argument on discovery requests, though it is  
18      open to the defense to, um, interpose written  
19      objections, but I will say in general the discovery  
20      requests are not inappropriate, but as I look at it, it,  
21      um, uses the term "targeted noncitizens." I would have  
22      hoped you would have agreed. You did not. The Court  
23      orders that you get 5 of these, not the number you want,  
24      but only 5.

25           In other respects, it appears that this -- these

1 requests are in order, and while the Court must rule on  
2 any objections that there may be, um, they've been  
3 filed, um, and I -- they're running, and, um, I will  
4 decide the motion for a protective order before answers  
5 and production is due. But to the extent I deny the  
6 motion for a protective order, I expect full production  
7 and timely, I don't expect to give extensions of these  
8 discovery requests.

9 Now that takes care of everything I wanted to say.  
10 Let's turn to the plaintiffs. And, um, first, I said  
11 you could have 5. Who do you want?

12 MR. BIALE: Your Honor, if we can have a moment to  
13 confer to answer that question?

14 THE COURT: You can.

15 MR. BIALE: And let me say, your Honor, my  
16 apologies for the informality of the letters, we wanted  
17 to keep the Court informed, but we appreciate the --

18 THE COURT: Well these letters are grammatically  
19 correct, it doesn't take long to put a caption on it.  
20 This Court -- and this is not some idiosyncrasy of this  
21 session, we don't go for letter practice in  
22 Massachusetts. Make oppositions, make motions, attach  
23 affidavits, that's what the Rule of Civil Procedure  
24 request.

25 MR. BIALE: Fair enough, your Honor.

1           THE COURT: All right, you may take a moment.

2           Mr. Kanter, any question about the Court's orders?

3           MR. KANTER: Um, no. I understand that, um --

4           first, thank you for entertaining the government's  
5 motion. I fully understand the Court's admonition that,  
6 um, this is a status conference and not an argument, so  
7 I won't argue, um, the motion today.

8           I am in receipt of the plaintiffs' letters, um,  
9 the two that the Court mentioned as well. I do have a  
10 comment about one of them, which is to say not the one,  
11 um, relating to the defendants' motion for a protective  
12 order, but the other letter. But I will comment at the  
13 appropriate time. Thank you.

14           THE COURT: I fully respect your answer and I  
15 understand it.

16           I've been a judge for a long time, I've heard a  
17 lot of letters and a lot of motions, since that's how we  
18 do it, whining about conduct with respect to discovery.  
19 I take all of that with a grain of salt, people are  
20 entitled to be advocates. But everything I said in the  
21 case-management conference governs. I expect full  
22 compliance and fulsome discovery of all these matters,  
23 which reminds me of one other matter. But now back to  
24 the plaintiffs.

25           Which 5?

1                   MR. BIALE: So we've conferred and the 5 that we  
2 selected are Mahmoud Khalil, Mohsen Mahdawi, Rumeysa  
3 Ozturk, Yunseo Chung, and Badar Khan Suri. And I'll  
4 provide the spelling of those names to the Court  
5 Reporter.

6                   THE COURT: They're in the motion, and I can give  
7 them to the Court Reporter. Thank you.

8                   Questions? Any questions about the Court's  
9 orders?

10                  MR. BIALE: No, your Honor, and I think --

11                  THE COURT: All right.

12                  MR. BIALE: To the extent we have any more  
13 questions, we will raise them in a formal motion.

14                  THE COURT: Thank you. But there is one matter  
15 that I overlooked.

16                  In your substantive letter you point out that --  
17 and at least as I listen to the news and read the  
18 newspapers, certain of the documents that the plaintiffs  
19 request be produced are -- have been identified in other  
20 litigation. As to those, without resolving whether I  
21 can go beyond -- though I will tell you, Mr. Kanter, my  
22 instincts are I can, I want those documents produced in  
23 this case by noon next Thursday.

24                  All right. If there are no other questions?

25                  MR. KANTER: I do, I have a question, your Honor.

1                   THE COURT: Yes, sir.

2                   MR. KANTER: Because I both listened to the last  
3 case-management conference, your comments at the start  
4 of this hearing, and I also studied the transcript, and  
5 I note that your Honor asked the plaintiffs to focus on  
6 three such cases, and plaintiffs served us with a  
7 request, they added 6 to the 3 and asked us for all --

8                   THE COURT: Now they're down to 5. Now they're  
9 down to 5.

10                  MR. KANTER: Yes. And I, um -- with the -- um, in  
11 the spirit of the Court's -- um, like we're talking,  
12 having a cup of coffee, sharing thoughts, rather than  
13 argument, it seems that, um, they raise the price, are  
14 given a discount, and have come out ahead. And --

15                  THE COURT: Mr. Kanter --

16                  MR. KANTER: Yes.

17                  THE COURT: We were sitting down having a cup of  
18 coffee the last time we met. Now you people aren't  
19 agreeing.

20                  MR. KANTER: Right.

21                  THE COURT: I can resolve disagreements. To the  
22 extent I am confident in resolving it on the record I  
23 have before me, I've resolved them. I'm going to give  
24 you a full and fair hearing on your motion. We'll  
25 proceed by motions.

1 MR. KANTER: Thank you, your Honor.

2 THE COURT: I've ordered 5. I'm satisfied with 5.

3 Any other questions?

4 MR. BIALE: I did have one question, your Honor,  
5 about trial procedure, if you would entertain that now?

6 THE COURT: Yes.

7 MR. BIALE: Certain of our witnesses may be out of  
8 the country at the time that we've set for the trial and  
9 we wanted to know if the Court would entertain remote  
10 testimony by one or two, hopefully not more than that,  
11 but it's --

12 THE COURT: It's much -- assuming we get there,  
13 I'm sensitive to what Mr. Kanter has raised in his  
14 motion, and be clear, I'm not going to be entertaining  
15 an argument that this motion that is pending before me  
16 has been waived or is out of time. I'm not going to  
17 allow delay, but I'm going to entertain the motion on  
18 its merits.

19 So -- but we should be doing the types of things  
20 you're talking about and I will entertain those  
21 questions. I assume it's a trial with witnesses, at  
22 least on some counts or to some extent or the like. I  
23 prefer agreement. If there isn't agreement, there are  
24 the Federal Rules and local rules that deal with matters  
25 like that. As you can see, this courtroom is

1 well-equipped to handle that. I am familiar with it.  
2 Live testimony is always to be preferred. I earlier  
3 said, and I'll simply reiterate, that jury-waived, I'm  
4 comfortable with taking matters out of order to  
5 accommodate witnesses. A good question.

6 MR. BIALE: Okay, thank you, your Honor.

7 THE COURT: Yes.

8 Other questions?

9 (Silence.)

10 THE COURT: Now I don't want us to get off on the  
11 wrong foot and, um, Mr. Kanter, I do this to accommodate  
12 you, and we've kept it down to just the matters I wanted  
13 to deal with, and I appreciate that. You're at a  
14 disadvantage -- well sort of functionally --

15 MR. KANTER: Yes, your Honor.

16 THE COURT: -- at a disadvantage by being at a  
17 distance, and I regret that, but that's what you wanted.  
18 I hope we can get back on track. Agreement is much to  
19 be preferred. They'll be no delays -- they'll be no  
20 delays in the Court's rulings. Um, cases, of course,  
21 can be resolved. Lincoln resolved many and he was a  
22 great trial lawyer. It is --

23 MR. KANTER: Your Honor, I do have --

24 THE COURT: Yes?

25 MR. KANTER: Your Honor, I do have a question, and

1       it relates to, um, the plaintiffs' letter, and I take  
2       the Court's, um, words that you take it with a grain of  
3       salt, but I do want to say something about the Court's  
4       instructions to us to collaborate over the course of two  
5       weeks. And I believe we did, I believe we collaborated  
6       well. And I raised the prospect of filing a protective  
7       order earlier than stated in this letter. That there's  
8       an error in the letter in that regard. And I can point  
9       it out, but I -- I'll take the Court's pulse on that.  
10      But I think that our general approach has been what kind  
11      of discovery will get us to trial within 6 weeks?

12           THE COURT: That's what I want.

13           MR. KANTER: Yes. And the Rule 26 proportionality  
14       principle therefore is very much in play. Our view  
15       frankly is --

16           THE COURT: You're arguing, Mr. Kanter.  
17       Respectfully, you can argue it in writing.

18           MR. KANTER: I want to be aspirational, which is  
19       that the rhetoric -- even if the discovery requests are  
20       disproportionate, the rhetoric should not be  
21       disproportionate to reality or the facts. And I just  
22       have to take exception to some of the very strong words,  
23       including "bad faith," that my colleague, my  
24       counterparts have used in this letter, um --

25           THE COURT: Mr. Kanter -- Mr. Kanter, I interrupt

1       you -- I interrupt you, because this is not, um, having  
2       heard you, now I'll give them equal time. I've been  
3       doing this a long time. You're saying things that  
4       respectfully I would expect you to say. Normally I am  
5       fully content with getting all these things in writing,  
6       and then I decide them.

7               Now the extent to which you can agree is manifest  
8       by agreement. When you can't agree, you set your best  
9       foot forward as advocates and I decide. I'm not loathe  
10      to decide. And taking exception to rhetoric, I'm used  
11      to rhetoric, I said I'd take it with a grain of salt.  
12      I'm not saying anyone, I'm not making any finding of bad  
13      faith or making that suggestion. I expect to go to  
14      trial, to adjudication anyway, of these matters as  
15      designated. That's where I'm driving, in an evenhanded  
16      fashion. There's no need to argue.

17               It's good to see you. And it's good to see you,  
18      Mr. Kanter, if only virtually.

19               We'll recess.

20               (Ends, 3:15 p.m.)

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1 C E R T I F I C A T E  
23 I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER, do  
4 hereby certify that the forgoing transcript of the  
5 record is a true and accurate transcription of my  
6 stenographic notes, before Judge William G. Young, on  
7 Thursday, May 22, 2025, to the best of my skill and  
8 ability.9  
10  
11 /s/ Richard H. Romanow 05-28-25  
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13 RICHARD H. ROMANOW Date  
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